Supreme Court, U.S.
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No. 70-140

In the Supreme Court of the United States

OCTOBER TERM, 1971

ODIS WARREN NOLTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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After a jury trial in the United States District Court for the Southern District of Texas, petitioner was convicted on one count of a four-count indictment, charging receipt of money stolen from the Lumberman's National Bank of Houston, Texas, in violation of 18 U.S.C. 2113(c). He was sentenced to imprisonment for three years and fined $1,000. The court of appeals affirmed (Pet. App.).

At trial, two accomplices testified for the government, and one for the defense. Petitioner argues that in this situation the trial judge erred by naming all three accomplices when he instructed the jury to consider an accomplice's testimony with "the greatest care and caution" (Pet. 12). This contention was

carefully considered and answered in the opinion below, on which we rely (Pet. App. 4–6).

Petitioner appears to raise, but does not argue, the contention that the trial judge removed an issue from the jury by classifying the defense witness, William Jackson Atkins, as an accomplice during the course of instructing the jury (Pet. 1–2, 12–13). Throughout his brief, however, petitioner himself refers to Atkins as an accomplice. In any event, as the court below noted, the instruction was correct since, as set forth in petitioner's brief, Atkins was implicated in the robbery of the Lumberman's National Bank and received money stolen from that bank (Pet. 4–5, 11–12). See *United States* v. *DeCicco*, 424 F. 2d 531 (C.A. 5).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1971.

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